



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MOP/166576

PRELIMINARY RECITALS

Pursuant to a petition filed June 10, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Washington County Department of Social Services in regard to Medical Assistance, a hearing was held on August 05, 2015, at West Bend, Wisconsin.

The issue for determination is whether the agency correctly assessed a medical overpayment in the amount of \$2,128.60 for the periods of June 2012 through August 2012, August 2013, and November 2013, April 2014, July 2014 through January 2015.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Tony Gehring

Washington County Department of Social Services
333 E. Washington Street
Suite 3100
West Bend, WI 53095

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Washington County. The petitioner also has one child in her household.

2. On April 27, 2012 the agency sent the petitioner a notice stating, "if your household's total monthly income (before taxes) goes over \$1,594.00, you must report it by the 10th day of the next month."
3. In April 2012 the petitioner's gross income was \$2,647.00. The petitioner never reported this increase in income.
4. The petitioner's monthly income was as follows: \$3,613.00 in June 2012, \$2,477.00 in July 2012, and \$2,485.00 in August 2012.
5. On May 29, 2015 the agency sent the petitioner notices for each claim number stating that she was overpaid the following BC Plus/Medicaid benefits:
 - a. Claim Number [REDACTED] - \$602.02 for the petitioner's BC Plus benefits from June 1, 2012 through August 31, 2012.
 - b. Claim Number [REDACTED] - \$78.00 for the petitioner's child's BC Plus benefits from June 1, 2012 through August 31, 2012.
6. On June 10, 2013 the agency sent the petitioner a notice stating, "if your household's total monthly income (before taxes) goes over \$1,640.00, you must report it by the 10th day of the next month."
7. In June of 2013 the petitioner's gross income was \$3,071.00. The petitioner never reported this increase in income.
8. The petitioner remained over the income reporting requirement in August 2013 with a monthly gross income of \$2,723.00.
9. On May 29, 2015 the agency sent the petitioner notices for each claim number stating that she was overpaid the following BC Plus/Medicaid benefits:
 - a. Claim Number [REDACTED] - \$701.17 for the petitioner's BC Plus benefits in August 2013.
 - b. Claim Number [REDACTED] - \$23.00 for the petitioner's child's BC Plus benefits in August 2013.
10. On September 23, 2013 the agency sent the petitioner a notice stating, "if your household's total monthly income (before taxes) goes over \$1,681.00, you must report it by the 10th day of the next month."
11. The petitioner's monthly gross income was as follows: \$1,433.00 in September 2013, \$1,307.00 in October 2013, and \$2,880.00 in November 2013.
12. The petitioner never reported an increase in income in 2013.
13. On May 29, 2015 the agency sent the petitioner notices for each claim number stating that she was overpaid the following BC Plus/Medicaid benefits:
 - a. Claim Number [REDACTED] - \$152.04 for the petitioner's BC Plus benefits in November 2013.
 - b. Claim Number [REDACTED] - \$44.00 for the petitioner's child's BC Plus benefits for the period of November 2013.
14. On February 17, 2014 the agency sent the petitioner a notice stating, "if your household's total monthly income (before taxes) goes over \$2,425.04, you must report it by the 10th day of the next month."
15. The petitioner's monthly gross income was as follows: \$2,627.00 in February 2014, \$3,187.00 in March 2014, and \$5,218.00 in April 2014.

16. The petitioner never reported an increase in income between February 2014 and April 2014.
17. On May 29, 2015 the agency sent the petitioner the following notice stating that she was overpaid BC Plus/Medicaid benefits:
 - a. Claim Number [REDACTED] - \$97.53 for the petitioner's child's BC Plus benefits in April 2014.
18. On May 21, 2014 the agency sent the petitioner a notice stating, "if your household's total monthly income (before taxes) goes over \$2,425.04, you must report it by the 10th day of the next month."
19. The petitioner's monthly gross income was as follows: \$5,409.00 in May 2014, \$5,527.00 in June 2014, \$4,283.00 in July 2014.
20. The petitioner never reported an increase in income between May and July 2014.
21. On May 29, 2015 the agency sent the petitioner the following notice stating that she was overpaid BC Plus/Medicaid benefits:
 - a. Claim Number [REDACTED] - \$430.84 for the petitioner's child's BC Plus benefits from July 1, 2014 through January 31, 2015.
22. On June 8, 2015 the Division of Hearings and Appeals received the petitioner's request for fair hearing.

DISCUSSION

MA overpayment recovery is authorized by Wis. Stat., §49.497(1):

(a) The department may recover any payment made incorrectly for benefits provided under this subchapter or s. 49.665 if the incorrect payment results from any of the following:

1. A misstatement or omission of fact by a person supplying information in an application for benefits under this subchapter or s. 49.665.
2. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report the receipt of income or assets in an amount that would have affected the recipient's eligibility for benefits.
3. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report any change in the recipient's financial or nonfinancial situation or eligibility characteristics that would have affected the recipient's eligibility for benefits or the recipient's cost-sharing requirements.

See also the department's MA Handbook, Appendix 6.2.1.1. The overpayment must be caused by the client's error. Overpayments caused by the agency error are not recoverable.

An appeal of negative action concerning MA must be filed within 45 days of the action. Wis. Stat. §49.45(5). The agency does not allege that the petitioner's appeal was untimely in this case.

The only issue in this case is whether or not there was an overpayment. The petitioner argues that there should not be an overpayment because her hours fluctuated, and her employer completed the employment verification of earnings forms to the best of the employer's ability given the hour fluctuation. I have no

reason to doubt the petitioner's credibility in this respect. It is evident from the petitioner's monthly gross income that her hours and work schedule varied. I also have no reason to doubt that the employer completed the employment verification of earnings forms with the employers best estimate of the petitioner's expected hours.

The petitioner fails to understand that this overpayment was not caused by her varying hours or the hours the employer reported on the employment verification of earnings form. Rather, the overpayment was caused when the petitioner failed to comply with her monthly reporting requirements. When a person is getting BadgerCare, the person has an obligation to report the following month that the person's income goes above 100% of the FPL. There is no dispute that the petitioner's income increased above this point, and that the petitioner failed to report the increase. The agency correctly used the amounts on the employment verification of earnings forms until the petitioner's monthly gross income increased above 100% of the FPL.

I note that income amount listed in the notices informing the petitioner of her reporting requirements were the income amounts for the FoodShare, not BadgerCare program. This is not an issue as the income reporting requirement for the FS program is 130% of the FPL. This is greater than the 100% of the FPL requirement for the BadgerCare program, and the petitioner's income was far in excess of the reporting requirements for both programs.

I do not find the petitioner's testimony that she never received several of the notices with the reporting requirements credible. This testimony is largely self-serving. The agency never received any returned mail and their system automatically mails the notices anytime there is a change in a person's benefits. I reviewed the case notes. These notes do not reflect a conversation in which an agency representative told the petitioner that they had received returned mail, and that that mail would be mailed to her current address.

I further note that the petitioner called the agency and reported decreases in income causing her FoodShare benefits to increase. If she knew the process to do that, it follows that she should also have known to report increases in income.

The petitioner admits that she would have received some of the notices. These notices would have also contained her reporting requirement. Although her specific reporting requirement varied, her income was so far in excess of these reporting requirements that even if she had only received some of the notices she should have been aware of the reporting requirement.

I have reviewed the agency's calculations in this case. The petitioner does not dispute the amount of her monthly gross income for any of the months in question. The agency's calculation of this overpayment is correct. The agency correctly began the overpayment the months in which the petitioner's benefits would have stopped or a premium would have been due had the petitioner correctly followed her reporting requirements. The agency also correctly did not include any additional months where the petitioner was actually entitled to the benefits that she received.

I do not find the petitioner's testimony that she was not getting BadgerCare for some of the overpayment period to be credible. The petitioner received notices informing her of her benefits and it is up to the petitioner to report any changes that would impact her benefits.

CONCLUSIONS OF LAW

The agency correctly assessed a medical overpayment in the amount of \$2,128.60 for the periods of June 2012 through August 2012, August 2013, and November 2013, April 2014, July 2014 through January 2015.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

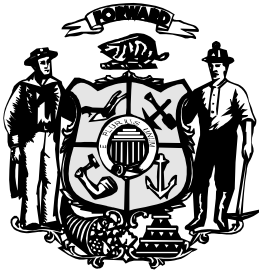
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 1st day of September, 2015

\sCorinne Balter
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on September 1, 2015.

Washington County Department of Social Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability